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ABSTRACT

The results of desegregation efforts from 1954 to 1975 are reviewed. The impact of court litigation on school integration both in the North and the South is discussed. Additionally, the impact of the Brown Decision of 1954 and the Civil Rights Act of 1964 are reviewed in the light of improvements in school integration. A brief summation of court decisions leading up to Brown vs. Board of Education, the Civil Rights Act, the Supreme Court decisions of the middle sixties, and the desegregation efforts in the North and South from 1968 to 1975 are described and reviewed. The report concludes that the desegregation efforts in the first decade after the Brown decision are seen as failures. The language of the courts was not as strong as it could have been. The report emphasized that in the last two decades great strides have been made to overcome segregation in schools. Statistically, the school integration figures illustrate that substantial enforcement of the Brown Decision has taken place within the last decade. (JP)

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THE STRUGGLE FOR EQUALITY IN EDUCATION

FROM BROWN TO 1975

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INTRODUCTION

It has now been over twenty years since the landmark school desegregation decision in Brown v Board of Education of Topeka, Kansas[1] and the changes brought upon our society since that decision have for the most part came about only within the last half of that score of years. On a purely educational level, it is easy to see the changes made under Brown and the subsequent Civil Rights Act of 1964[2] simply by quoting statistics. At present, more than six million of the nation's estimated 6.8 million black students are in school with white students. This is in dramatic contrast to the estimated 3.5 million black students who were moving systematically through the public schools in total racial isolation a decade ago.[3]

The millions of black students whose lives have been directly affected by desegregation are outnumbered by an estimated 8 to 10 million white students who would have stayed in all-white schools had it not been for changes brought about by the Civil Rights Act of 1964. This went hand and hand with parallel court decisions upholding equal educational opportunity and the voluntary initiatives of local school districts.

Now that both the twentieth aniversary of Brown and the tenth aniversary of the Civil Rights Act of 1964 have come and gone it is necessary to look at the results of the desegregation efforts. Further statistics are one way to look at the South in an effort to determine whether Brown and the Civil Rights Act of 1964 had any impact. These statistics do support the proposition that Brown served as the beginning point for a radical social change in the segregated pre-Brown society of 1954.

In 1954 not one black child was attending public school with a white in the Deep South. In the years 1963-64 about 1.2% of the black children in the eleven Deep South states attended school with whites and in states such as Alabama and Mississippi there were virtually no black students in white schools at all. An increase to approximately 7.5% was registered in the 1965-66 period.

From that year to the present the pace has picked up considerably from a historical perspective. By 1968-69 the figures had increased to almost triple the previous years with a 20.3 percentage. Here again, Alabama and Mississippi provided the lowest figures with a 7 percentage. Changes were even more recognizable by 1971 in that changing legal standards had resulted in desegregation to the extent that only 9.2% of the black children in the Deep South were going to an all-black school. This represented the first time the South surpassed the North in the number of black children attending public schools which were for the majority white: 43.9% in the Deep South to 27.8% in the North.

In recognizing the great effect Brown had on our lives more must be looked at than mere statistics. Brown must be seen as a spearhead attack on segregation. The laws have wiped away much of the legal grounds for segregation but large measures of fear and loathing and other measures of racial discrimination remain. The change brought about by the Brown decision and the Civil Rights Act has not always come about in a smooth manner.

This change, as expected, often came in the face of rigid grassroots opposition, heated political debate, and the continued escalation of the legal requirements placed on local school districts by Federal Courts. In effect, it has taken twenty years to bring about enforcement of the 1954 Brown decision. The slogans and catchwords such as "with all deliberate speed," "freedom of choice," and "cross-busing" written into the decisions and the law itself have for the most part fallen by the wayside.

The effect upon the lives upon the individuals involved in this change, the students themselves, must also be examined to get a full understanding of the changes brought about by the school desegregation movement.

The major importance of Brown is as the "signal for the swift disintegration of the legal structure supporting racial segregation in the south."[4] Although the major emphasis in Brown was on the school system, the Warren Court in various short per curiam orders citing Brown as precedence either affirmed or remanded for further proceedings "not inconsistent with Brown" decisions involving the desegregation of numerous other public facilities ranging from city buses to swimming pools.[5] This represents a deep and lasting attack on the social structure that existed in the South at the time.

This study will look at Brown in its perspective as the major impetus in a revolution in civil rights that took place in the twenty years following the Brown decision and continues to this day. It will attempt a further chronological analysis of the effect the Brown and the Civil Rights Act had on social and educational life in the South. Furthermore, this study will look at the Civil Rights Act itself and the efforts ofthe governmental agencies charged with enforcing them.

Recognizing that the cornerstone for achieving social equality is the desegregation of the educational systems that provide a focal point in any society for educating that society and further recognizing that the cornerstone must support that society this study will close with a brief look at desegregation efforts and court decisions dealing with schools in the North and West.

PLESSY v FERGUSON AND BEYOND: A BRIEF SUMMATION OF DECISIONS LEADING UP TO BROWN v BOARD OF EDUCATION

In 1896, a landmark of sorts was reached for the segregationist cause, this was the decision in Plessy v Ferguson.[6] Here, the Court held constitutional a statute of the state of Louisianna requiring the practice of segregation on railroad facilities. The Court in this decision stated that so long as "separate but equal" facilities were extended blacks they were not denied benefits of the equal protection laws. The states in the Deep South were more than willing to follow this ruling from the Supreme Court and continued to enforce separation of blacks from whites by establishing segregated facilities for blacks thereby restricting and excluding them from the use of white facilities.[7]

At the beginning of World War II, there had been no substantial inroads made on the Plessy v Ferguson decision. However in 1939 the Supreme Court began to look at the concept of equality more closely in holding in Missouri ex rel Gaines v Canada[8] that the state of Missouri could not exclude a black from its state university law school when the only alternative offered was paid attendance at an out-of-state institution.[9]

In 1949, the Court took a look at the legal education a student was receiving in a segregated Negro college in comparison with one received from the all-white University of Texas and held that Plessy's "separate but equal" mandate had not been satisfied and ordered the state of Texas to admit the Negro plaintiff to the State Law School. In 1950, the Court held that a Negro graduate student had been denied the equal protection of the law by being required by the University of Oklahoma to sit at a separate classroom, library, and dining tables.[10]

These last mentioned decisions in the years immediately preceding Brown v Board of Education illustrate a redefining on the part of the Court as to exactly what constituted equality in each case. As was obvious in the southern states the separate but equal doctrine could in fact foster inequality. The dual school systems in the South at that time were inherently unequal. This fact can be illustrated by the inferior facilities, textbooks, and the low standard of teachers available to the Negro schools. The South here was, in effect, "looking away" as in the southern anthem "Dixie" from the racially separate schools for blacks and denying them a fair share of funds and local support. Reversal of the "separate but equal" doctrine of Plessy v Ferguson awaited the decision of the Supreme Court in Brown v Board of Education.

BROWN v BOARD OF EDUCATION: FROM A SPARK TO A FLAME-1954-1964

Brown v Board of Education of Topeka has been called the National Association for the Advancement of Colored People's greatest triumph, "a landmark decision destroying completely the constitutional foundations upon which legalized segregation in the South rested."[11] In overturning the Plessy doctrine of "separate but equal" the Court held that enforced racial segregation of public education was a denial of the equal protection of the law quaranteed under the 14th Amendment and that "separate educational facilities are inherently unequal."[12] In its decision of May 17, 1954 the Court further stated that "segregation with the sanction of the law has a tendency to retard the education and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated system."[13]

The measure of the NAACP's and its then chief counsel, Thurgood Marshall, victory was that it extended far beyond the educational field to all areas of society. The Court gave a very wide interpretation to Brown and its applicability and the reasoning behind Brown served as a signal to end racial discrimination by law in the United States. With this there was the sound of a curtain falling on an era. The day the decision was handed down was called "Black Monday" by many. The transportation, housing, parks, and recreational facility cases that immediately followed Brown destroyed the separate but equal doctrine virtually across the land.

The decision in Brown was both an end of the struggle and the beginning of another much more successful one, Although the Supreme Court justices held desegregation unconstitutional they did not order the immediate desegregation of schools in the southern states. It wasn't until the second Brown decision, Brown II, that the Court took it upon itself to study the compliance issue. Here again, it didn't order immediate desegregation. In its place, after a long hard look at the existing pattern of racial segregation that had engraved itself by law and practice into the systems of seventeen southern states and the District of Columbia the Court recognized that local problems in forcing desegregation on the school system would be tremendous and held local school boards responsible for solving these problems. At the same time, the Court held the lower courts responsible for deciding whether the local action constituted compliance with the reasoning in Brown.

As can be seen, the Court's language was not the strongest it could have been under the circumstances. The Court, additionally, asked the lower courts to require "a prompt and reasonable start towards full compliance" and called for the solution of the administrative problems involved in the desegregation effort "with all deliberate speed."[14] In retrospect, admitting that hindsight is always 20-20, the choice of the phrase "with all deliberate speed" is a poor one in that it backs off from the necessity for immediacy in the dismantling of segregational structures in the dual southern school system. Unfortunately, it allowed the Southern states to interpret

"with all deliberate speed" to mean with all deliberate slowness.

The years from 1954 to 1957 served as a sort of last dance before the fall for official segregation in the Deep South. Race was no longer to be considered but massive resistance legislation and the clever use of pupil assignment acts by fifteen of the southern states allowed the states to continue to segregate black students. A lengthy bureaucratic complaint maze had to be followed for parents to object to their childs placement. The Fourth Circuit Court of Appeals in Carson v Wallic[15] upheld the bureaucratic maze necessity for Negro students until overturned in 1962. Today, Federal Courts allow much easier access to segregated black children.

Perhaps the Court realizing that not much effort, if any, was being made toward desegregation in 1958, in Cooper v Aaron[16], once again called on local officials to make a prompt start. But here again the Court did not use strong enough language and failed to define exactly what would meet the nebulous requirements of a standard expressed as "a prompt and reasonable start."[17] The Court did go further and admonished the southern states "that no scheme of racial discrimination against Negro children could stand the test of the 14th Amendment if there is state participation through arrangement, management, funds, or property."[18] The decision further stated that the Brown principles could not be defeated by violent resistance.

At the same time, the 1957 Civil Rights Act was passed by Congress and signed into law.[19] The Act of 1957 was the first civil rights legislation passed by Congress since the post-civil war Reconstruction period. It dealt mainly with voting rights but was important to the educational desegregation effort as a stepping stone for later acts, among them the Civil Rights Act of 1960.[20] The Act of 1960 strengthened the 1957 Act as to enforcement of voting rights and contained limited criminal

penalty provisions related to bombing and to obstruction of Federal court orders, aimed primarily at school desegregation orders. The Civil Rights Commission and the Civil Rights Division of the Department of Justice were set up under the 1957 Act.[21]

In 1963, as dicta in a Memphis park desegregation case, the Court expressed its dissatisfaction at the slow speed of school desegregation. The Court, at the time, pointed out the nine year time span since the Brown decision while stating "it was never contemplated that the concept of 'all deliberate speed' would countenance indefinite delay in elimination of racial barriers in schools. . . the basic warrants of our Constitution are for the here and and now and unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled."[22]

The desegregation efforts made in the first decade after Brown must be ultimately seen as failures. Beyond mere token lip service to the Brown decision little had, in fact, changed in day to day life in the South. Much of the attitude prevailant in the South at the time can be illustrated by Lawrence W. Knowles[23] quoting a southern federal district court judges statement that the Supreme Court's decision in the school segregation cases is "one of the truly regrettable decisions of all time."[24] This statement does much to express the attitude prevailant in the South at the time. It was one of bitterness and negativism among the majority of whites. They looked upon Brown as one huge mistake that they would do as little as they damn well pleased to enforced. Another method of avoidance of the Brown decision was the closing down of public schools and the channeling of the funds available for them into white private schools. In 1963, Virginia's Prince Edward County began it's fifth year without public schools. The atmosphere was right and the stage was set, although only sparsely due to the nine year drought after Brown, for the events of 1964.

THE CIVIL RIGHTS ACT OF 1964 AND THE SUPREME COURT DECISIONS OF THE MIDDLE SIXTIES: FANNING THE FLAME

In 1964, the Court took an even closer look at the desegregation efforts, or lack thereof, of the southern states and held in Griffin v Prince Edward County School Board[25] that the closing of all public schools, as previously mentioned, in Prince Edward County, Virginia to avoid integration was unconstitutional as it violated the equal protection clause of the 14th Amendment. Here, the Court went so far as to state "that there had been entirely too much deliberation and not enough speed."[26] Up until this decision black children had gone without formal education except in the rare cases where private financing established an emergency school program in 1963.

In the latter part of the opinion, the Court also said that the discrimination against the Negroes in the county whose alternatives as to education were fewer than those made available to the white students of the county, was against the equal protection clause of the 14th Amendment. The Court went further in outlawing the granting of tuition grants and tax credits to those using and assisting private schools for the white students while Negroes were denied public schooling. In this ruling the Court held that although the schools were named private schools they were in fact "beneficiaries of county and state support."[27]

The decision in Griffin is a minor landmark of sorts in that it represents one of the first instances in which the Court took an active step against the actions of the local school boards in resisting desegregation through roundabout efforts of avoidance. A second important facet of the Griffin decision is that it stands as a broad retreat from the "with all deliberate speed" doctrine and recognizes the slowness inherent in the South's concept of speed in its desegregation efforts.

In further 1969 Court decisions the Court refused to review two circuit court opinions involving school segregation and thereby upholding them and furthered the school desegregation movement. The Court upheld a 5th Circuit Court of Appeals decision requiring the Duval County (Fla.) School Board to stop assigning teachers in its school system on a racial basis(Duval County Board of Public Instruction v Braxton).[28]

Secondly, in a widely noted case, the Court also refused to review a 7th Circuit Court of Appeals decision declaring that racial imbalance in Gary, Ind. schools could not be attributed to school districts having been drawn on a racial basis and that the resulting de facto segregation was not unconstitutional.[29] This can only be seen as a defeat for the school desegregation effort. It is against this background of Supreme Court activity that the most important piece of legislation in the school desegregation struggle was passed.

On a brief historical and political note it must be mentioned that the period of 1963 and 1964 was the right time politically for the passage of the Civil Rights Act of 1964. The image of the late Dr. Martin Luther King, Jr standing in front of the Lincoln Memorial on a hot August day in 1963 speaking of his "dream" was still fresh in the minds of millions of Americans who watched the event on television.

Just two months earlier, President Kennedy, on nationwide television presented his civil rights legislation. After his assassination in Dallas in November, 1963 President Johnson pushed the Act through Congress as a "memorial and eulogy" to Kennedy and eight months later signed the Act into law.[30]

The Civil Rights Act of 1964 was a broad sweeping piece of social legislation seeking to reverse racial discrimination on many levels. Among these were the fields of voting rights, public accomodations, desegregation of public facilities, and equal employment opportunity. Two sections specifically dealt with public school discrimination. On the one hand, Title IV of the Act dealt specifically with desegregation of public education whereas Title VI dealt with nondiscrimination in federally assisted

programs which would also have a great effect on reversing public school segregation.

First to be discussed will be Title IV, Desegregation of Public Education, the Act at the time required the Office of Education, Department of Health, Education, and Welfare to make a survey and report to Congress within two years on the progress of desegregation of public schools at all levels.[31] The Act of 1964 also authorized the Office of Education to give technical and financial assistance if requested, to local public school systems planning or going though the process of desegregation. The assistance listed in the Act of Act of 1964 could be:

> technical assistance in the form of information on effective methods of coping with sprcial problems arising out of desegregation or making available Office of Education or other personnel equipped to handle such problems;
> arrangements through grants or contracts, with colleges and universities for special institutes to train school personnel to deal with desegregation and payments of stipends to those who attend the institutes on a full time basis;
> grants to a school board to pay for the cost of givi ng school personnel special training or employing specialists.[32]

On another level, the Act of 1964 authorized the Attorney General to file suit for the desegregation of public schools and schools if he received a signed complaint from a student or a group of students, believes that the complaint received is a meritorious complaint, and certifies that the aggrieved individuals are unable to initiate and maintain legal proceedings, and the action would "materially further orderly school desegregation." This section further provided that the aforementioned suit may be filed only after the Attorney General has first notified the local school board or college authority of the complaint and given them a reasonable time in which to adjust the conplained of conditions.[33]

The drafters of the Civil "ights Act of 1964 recognized the importance and indeed necessity of the granting of federal financial assistance to the public school systems involved. In Title VI of the Civil Rights Act of 1964, Nondiscrimination in Federal Assisted Programs, the Congress granted the government another important weapon in the battle to combat discrimination in education. Title VI "bars discrimination

under any program or activity receiving federal financial assistance against any person because of his race, color, or national origin."[34]

In addition, Title VI directed each Federal Department or Agency extending financial assistance to any program or activity through grants, loans, or most kinds of contracts and to issue rules or regulations, to be approved by the President, to carry out the purpose of this rule. This section of the Act and the subsequently issued regulations served the purpose of blackmailing the school systems effected into complying. If non-compliance was found after the usual administrative hearing procedures funding to these school districts could be terminated. There were not many, if any, public school systems that could operate without federal financial assistance of some sort. Thus, this section of Title VI served as a substantial threat to hold over the school systems.[35]

Responsibility for enforcing Title VI signed into law on July 2, 1964 and the implementing Regulation which was signed by the President on December 3, 1964 was vested in the United States Office of Education, Department of Health, Education, and Welfare. Specifically Sec. 601 stated:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[36]

Those school districts operating dual school systems could comply with Title VI by submitting an order of a Federal District Court for the desegregation of the school system presenting the order or by adopting a desegregation plan acceptable to the Commissioner of Education.[37]

Dr. Lloyd R. Henderson, now Director of the Elementary and Secondary Education Division, Office for Civil Rights, and then on the staff of the original nucleus of twenty-five or so individuals within the Office of Education attempting to enforce Title VI as stated. Within the Office of Education there did not seem to be a clear

understanding of how to proceed to enforce Title VI. At first a copy of the Regulation was sent to school systems and they were advised to comply with the law. However, school officials who had to develop desegregation plans wanted to know just exactly what was compliance. At the time, there was an apparent reluctance within the government to answer this question with any degree of specificity, because, of necessity, any standards set forth would have to be minimum standards."[38]

However, in April, 1965, the "General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools" were issued, hereafter called The Guidelines. In order for a southern school system to retain its eligibility for Federal funds those which were not desegregating under a court order were required under the Guidelines to adopt a desegregation plan. At the same time, the Guidelines allowed a district to offer a Free Choice of schools for a minimum of three grades a year beginning in the 1965-66 school year.[39]

The concept of Freedom of Choice marks the efforts of the Office of Education to bring about desegregation in the public schools of the southern states in the middle years of the Sixties. It is a course that is marked either by naivete or lack of sufficient efforts on the part of the Court and the executive branch of the government. The initial fallacy of freedom of choice is that once again it placed the initiative on the black students.

Although efforts were made by the Office of Education to strengthen its Guidelines and make them stricter procedurally the effort can only be seen as a failure in that it failed to take into account the social climate still existing in the South. It forced the black student to be the instigator of whatever efforts were made in making the choice while not recognizing that the majority of Southern blacks were and to a great extent still are economically dependent on the majority white population.

Because of this, an economically dependent class of people were being charged with the burden of bringing about compliance with the law. Compliance under these circumstances would never be achieved and the choice made would in reality never be a free one. It was rather a choice greatly decided by white neighbors, expressing their bitterness and anger, the subtle or more frequently not so subtle threat by the white boss about loss of a job for a child's "choice" of a white school. By and large, the Office of Education's Freedom of Choice campaign must be considered a failed by-product of a combination of naivete and inability to take strong steps to force desegregation.

At the same time in 1965, the Supreme Court, on several different occasions, expressed its impatience with the speed of the desegregation efforts taking place. On November 15, the Warren finally discarded its 1955 rule in Brown II calling for "all deliberate speed." The Court in two Virginia suits stated "delays in desegregation of school systems are no longer tolerable."[40] In a unanimous decision, the Court vacated and sent back to federal district courts for full evidentiary hearings Bradley v School Board, Richmond, Va and Gilliam v School Board, Hopewell, Va. on the grounds that such hearings on school desegregation plans should have been held there in the first place. The district courts in these cases had approved the plans without resorting to a full hearing. The Court held the plaintiffs were entitled to a full hearing.

Once again, on December 6, 1965, the Court moved to speed the pace of desegregation. In a short, unsigned opinion in Rogers v Paul the Court ordered the Fort Smith, Ark, school systems to allow the Negro petitioner to "immediately transfer" to an all-white high school and said "those similarily situated might transfer as well." Here again, the Court said "delays were no longer tolerable."[41] Like the Griffin decision this opinion stands as an important step forward in that serves as one of the first Supreme Court decisions where the Court actively ordered a segregating school system to admit a black student.

The opening of the 1965-66 academic year marked a milestone in efforts to end public school segregation in the southern and border states. It also further illustrated the difficulty in bringing about integration on more than a token scale. By the time classes had started approximately 89% of the school districts in the seventeen southern and border states had met the federal requirement of integrating at least four classes. This allowed the districts to keep receiving federal aid payments. On September 18, compliance was reported to have risen to as high as 98 percent by the Southern School News, a Southern Education Reporting Service publication.

Nevertheless, this statistic, taken by itself, was misleading in that many of the newly desegrated schools had only a few Negro students attending classes with white students. So although there was a high percentage of integrated school districts the total number of black students attending integrated classes was low. Late in 1974, Dr Henderson, then Director of the Elementary and Secondary Education Division, Office for Civil Rights, conducted interviews with the true pioneers of the desegregation effort, the black students and their parents who made the "free choice" back in 1965.

The efforts of Mr. and Mrs. Matthew Carter of Drew, Mississippi are indicative of the harassment and fear blacks faced in attempting to exercise their free choice and attend white schools. In August, 1965, the local school system, under HEW's direction, notified the public that students could attend any school they wished. The Carters, reasonably believing their children could obtain a better education in the white school, signed the form to have their seven children sent there. At six o'clock the next morning the overseer of the plantation on which they were sharecroppers drove up and told the Carters they were making a bad mistake and would be evicted if they persisted in efforts to send their children to the white school.

Two nights later, at three o'clock in the morning, a truck came by firing a half dozen shots into the house, barely missing the sleeping children. At picking time, the Carters were not given their 25% of the mechanically picked crop, were told

they were $97.00 in debt, and told to leave. After great difficulty in finding a place to live almost forced the Carters to give up their struggle an out-of-state civil rights worker bought a house and rented it to them.

Attending school after these events would have to seem anti-climatic. However, the children were frequently harassed by the school administration and the white students in subtle ways, such as being told to bathe more frequently, and faced academic problems as could be expected. On the bright side, ten white students wrote and gave to the Carter children a letter expressing their support.[43]

This incident represents the hostility inherent in most white southerners towards the actions these "pioneers" were forced to face in their efforts to attend white schools. As difficult to face as the events in the Carter case evidence they were by no means the hardest or most dangerous, A number of times houses were burnt out from beneath black families sending children to white schools. In other cases, children were openly taunted in school, beaten, and then suspended from school for "instigating" the fights. In one case, a black girl after being beat up by a white boy on a previous occasion struck the white boy and was charged with assault and battery. In effect, she was forced to plead guilty and bears emotional scars and the memory of a criminal conviction to this day.[44]

The fact that many of these students had the determination and perseverence to continue seeking integrated education and many to go so high as to attend now integrated colleges and universities does much to speak for their courage. However, here the question must be asked what happened to the thousands of Negro children and their families that didn't have the perseverance to face this opposition. The answer, of course, is simply that these students representing the vast majority of black students in segregated schools in the Deep South stayed right where they were in the Freedom of choice years. This graphically illustrates the basic weakness of this doctrine.

Despite stiffer Federal pressure on the local schools to further desegregation in fall 1965, in 11 southern states only 12.5 percent of Negro students attended school with whites in comparison to 6% in 1965.[45] On February 16, 1966, the Civil Rights Commission charged HEW's 1965 guidelines were by no means strong enough to further enforcement. The Commission's report further found that only a "very small number" of Negro children attended school with white students in the states surveyed. The Commission's report estimated that only about one in thirteen Negro children attended an integrated school in 1965. This report also cited the previously mentioned failures of the freedom of choice plan. In citing reasons for the failure the Commission listed inertia in both the white and black communities and the same fear of reprisal among Negroes if they transferred to a white school.[46] Not surprisingly, the report found that few whites elected to transfer to Negro schools.

On March 7, 1966, the Department of Health, Education, and Welfare issued a newly revised set of guidelines for desegregation under Title VI of the Civil Rights Act of 1964. However these guidelines were aimed only at the dual school systems of the southern states and not the "de facto" segregation present in northern cities which will be looked at at a later point in this study. The 1966 Guidelines provided for elimination of discrimination in faculty assignments. At the same time, the Guidelines provided for a spiraling percentage system to measure the effectiveness of the free choice method of desegregation. Here, for instance, if 8 or 9% of the students were to transfer from segregated schools double that amount would be expected in the next school year. If it were a smaller percentage, say 4 to 5%, the Office of Education expected triple that amount to transfer in the next school year.

Additionally, in a necessary recognition of the social climate then present in the South, school districts were required to ensure that free choices were in fact "free" and exercised with no fear of reprisals. The emphasis in the Office of Education was

shifting from negotiating desegregation plans with the individual school districts to ensuring their performance.

Controversy throughout the nation, in the halls of Congress and the Departments of Justice and Health, Education, and Welfare, as to desegregation and how best to achieve it continued in 1967. In an important step forward in recognizing the complexity of the desegregation issue HEW consolidated enforcement powers, previously in different divisions of the agency, in the newly created Office for Civil Rights.[47]

On January 1, 1967, new guidelines for desegregation were issued by HEW which substantially increased the percentage figures necessary for compliance. HEW press release figures for the end of 1967 listed a strong increase in the numbers of students entering desegregated schools. This was accomplished on the one hand by HEW's terminating federal funds to a total of 122 school districts of which 47 later complied with the Act of 1964. On the other hand, this was accomplished either by court order or the need for government funds. Seventy-five school districts remained in noncompliance at the time of the press release.

Figures supporting the claim of increasing success in desegregation efforts are as follows: during the 1966-67 school year 466 dual school systems, both black and white, eliminated their duality and established one school system for all pupils. Furthermore, 3013 of 4588 school districts in the 17 southern states had assured HEW that they were operating in compliance with the HEW Guidelines. A further 1225 schools were operating under voluntary compliance plans while 350 were still under a court order to desegregate.[48]

In the first suit of its kind in the brief history of the desegregation effort, the Department of Justice, on March 20, 1967, filed suit in federal court in Montgomery, Alabama against the Dale County Board of Education and its Superintendent. This suit was an attempt to force the Board to live up to its assurances to HEW on compliance

with desegregation guidelines. On March 22, the Federal Court in Montgomery placed the State of Alabama's Board of Education under an injunction to begin desegregation. This was the first time an entire state had been enjoined to begin desegregation.[49] At the same time, the Supreme Court in a strongly worded opinion in Green v County School Board[50] expressed with the utmost clarity once again that it would tolerate no further delay in implementing Brown in directing the school board to comply with desegregation efforts.

It had been argued since the monumental decision in Brown(1954) by representatives of the southern states and southern school board officials that the school desegregation effort itself could be seen as a dual system of sorts in that the South was bearing the total brunt of desegregations whereas the North was making no effort to integrate schools in their systems. Kenneth Clark, noted psychologist and educator, whose research was cited in the Brown decision rendered the following quote:

> In the 15 years since 1954, relative change has been unquestionably greater in the South than in the North. In fact, the South can look at the North with a certain ironic condescension in terms of acceptance of rapid change towards a nonracist society.[51]

There is and always has been a great difference in attitude between the North and South as to whether it see itself as discriminating. Clark goes further and states:

> The North did not think the Brown decision applied to them. The North had joined earlier in the Negro reaction against southern resistance to change. Now it became clear that racism was also virulent in the North, all the more insidious for it non-recognition . . .And when the North discovered it racism, it tended to provide justification for it and to react defensively-white backlash-rather than to engage in a struggle for social transformation.[52]

In the late Sixties it was rapidly becoming apparent that the struggle for desegregation in public education would have to take place on two fronts, the North and South. That struggle continues to this day.

1968 TO 1975: RECOGNITION OF BOTH THE NORTH AND SOUTH AS BATTLEGROUNDS FOR DESEGREGATION: THE FLAME REACHES HIGHER

The year 1968 stands as the turning point for official recognition and action against discrimination in both the North and South. On March 19, 1968 HEW's Office for Civil Rights issued new guidelines for nondiscrimination in schools. The major importance of these revised guidelines lies in the fact that for the first time the guidelines applied to both northern and southern schools.

However, the guidelines did not go so far as to require correction of the imbalance that was resultant solely from private housing patterns. This was a great problem in the many large cities in the North. Nevertheless, the guidelines did prohibit school systems from denying a student, because of race, religion, or national origin, the education "generally obtained" by other students in the school systems. Standards for measuring the "generally obtained" qualification ranged from poorer facilities and equipment, lower-per-pupil expenditures, to fewer or less qualified teachers and the provision of less than adequate curricula and extracurricular activities.[53]

On April 25, another first took place when the Justice Department filed its first school desegregation suit in the North, The suit, charging discrimination in faculty and staff assignments was filed against School District 151 of Cook County, Ill., located in a suburban area outside Chicago. The major basis for the Department of Justice's complaint was that faculty and staff assignments of Negro teachers were almost without exception to schools attended completely or nearly so by Negro students.

As to the cutoff of funds, as of May 10, 1968, federal funds had been cut off from 98 school districts for noncompliance with the Act of 1964. Additionally, 103 school districts were being proceeded against for alleged violations but funds

had not been terminated at that time.[54]

The latter years of the Sixties and the early Seventies represent years of conflict in the advancement of the civil rights movement. The beginning of the war in Vietnam and its escalation in the middle Sixties had a great effect on the civil rights movement. On the one hand, it robbed the movement of its position in the national limelight. On the other, it forced President Johnson to refocus his own energies on the Vietnam war while losing much of his support in Congress as well. In the long run, the Vietnam war forced Johnson out of office and left the fine cloth of his dream of a Great Society in rags.

In 1968, the new Nixon Administration began retreating to a great extent from the forward desegregation thrust of the Johnson era. This retreat was most noticeable when it came to the busing issue in the northern states. In contrast, from 1968 the Supreme Court began taking a much stronger stand in the area of enforcing Brown. The number of cases it decided in that year, even the post-Warren Court, illustrate fruition of the Court's active role in seeking desegregation in public education.

As mentioned, in May, 1968, the Court in Green v County School Board of New Kent County, Va. ruled that the free choice plans were no longer an acceptable means of desegregating "if there are reasonably available other ways, such as zoning, promising speedier and more effective conversion to a unitary nonracial school system."[55] This decision stands as the first expressed realization on the part of the Court that freedom of choice might not be the quickest and most efficient means in which to achieve desegregation.

In the twilight of the Warren Court, the 1968-69 term, the Court made another decision in the educational field, United States v Montgomery County Board of

Education.[56] In this decision, the Court held that a district court could constitutionally establish a specific ratio of white to black teachers and staff members to be met by schools desegregating their faculties. In another case, the Court ruled that previously segregated and inferior Negro schools in the county so affected educational opportunity that the then current practice of use of a literacy test for voting was in fact an abridgment of the right to vote on account of race.[57]

In 1969, another important case illustrating the newly acquired trend of the Nixon Administration to seek delay in desegregation plans allready in effect was decided. On October 29 the Court in a unanimous opinion denied the Administration's request for further delay in desegregating certain Mississippi schools. In this opinion, Alexander v Holmes County Board of Education[58], the Court held that "all motions for additional time should have been denied, since a continued operation of segregated schools, under a standard of allowing "all deliberate speed" was no longer constitutionally permissible."[59] The time for "all deliberate speed" was now past and immediate desegregation of the 33 Mississippi school districts was to be ordered by the U.S. Court of Appeals.

The Alexander decision answered two important questions in the negative. First, it ruled there was no reason to delay desegregation of the school systems rebuffing President Nixon's new administrative policy. Secondly, it held that during litigation the school system should not be allowed to remain segregated but should be ordered by the appropriate court to desegregate immediately and save the arguments for later. By answering these two questions in the negative the Court greatly advanced the desegregation effort.

However, the basic thrust of the Nixon's Administration effort to delay the final desegregation deadline for southern schools could be seen on another level in 1969, that of the executive branch itself. On July 3, 1969, it was announced that the Administration would no longer use the termination of federal funds as the major tactical weapon in ensuring desegregation. Instead, the emphasis would shift to the Department of Justice's filing lawsuits against the numerous still noncomplying school districts.[60]

The U.S. Commission on Civil Rights along with black civil rights leaders criticized this change as being less effective than the threat of instant poverty for schools found in noncompliance. School desegregation statistics released in an HEW Newsletter gave credence to this argument by showing that areas under court order achieved substantially lower desegregation rates than those under the auspices of the Department itself.[61]

At the time the Nixon Administration took office 123 school districts had lost their federal financial assistance since the passing of the Civil Rights Act in 1964. Although the Administration announced it had not given up on the cut-off of funds as a method of enforcing the Act of 1964 no fund cut-offs were announced after July, 1969 for that year.[62] At the same time, HEW began its first enforcement proceeding against a nonsouthern school system, Ferndale, Mich. These actions, on the part of the Nixon Administration, illustrate the severance of the long alliance between the Federal Government and the civil rights advocates in the school desegregation field.

In 1970, the Nixon Administration withdrew even further in its position on Federal enforcement of school desegregation. In February, Leon Panetta, Director of HEW's Office for Civil Rights, resigned in protest claiming that Administration was yielding to southern political pressure at the expense of the desegregation

enforcement effort. President Nixon was quoted at the time as saying "the schools are primarily instruments of education and changing the racial composition of student bodies 'for a purely social end' is a 'misuse of the school.'"[63]

Near the end of March, 1970 Nixon set forth the Administrations policy in a message to Congress. Although the message mentions the illegality of deliberate racial segregation and calls for its immediate elimination it appeases the opponents of busing by calling the "neighborhood school the most appropriate base for a public school system."[64] The message goes even further in stating "transportation of students beyond normal geographic school zones to achieve racial balance will not be required."[65]

In recognizing the problem of de facto segregation the message states "racial imbalance may be partly de jure in origin and partly de facto. It is appropriate to insist on a remedy for the de jure part and not the de facto part."[66] This recognized the major problem of dealing with segregation in the North, segregation due to massive concentrations of blacks in the major northern cities. It was segregation by fact rather than by law, as was the case in the majority of southern desegregation cases. Although this position recognized de facto segregation it backed off from dealing with the problem on a practical level. This position was in direct conflict with the majority of civil rights leaders at the time.

In looking at the problem of de facto segregation it is necessary to present a few facts and figures which graphically illustrate the problem. The first nationwide statistics, as opposed to purely southern states, were taken in the beginning of the 1968-69 school year. These figures show that 3 out of 4 black students still attended majority black schools.[69]

The major problem in fighting de facto segregation was the fact that many of the major cities in the North had heavy black or almost exclusively black populations. The flight of the whites to the suburbs had begun early in the

second half of this century in many northern cities and increased in numbers to this day. In the North the simple solution for whites facing desegregation in northern schools was to spread out along the fringes of the city in "well-planned, orderly 'communities' minus blacks.

There were, of course, other reasons besides the rapidly increasing number of blacks in the northern cities, among them the peace and quiet of "country living", a higher economic standard of living for the white middle and upper middle class, and the desire to escape the day to day headaches of living in large urban areas. However the fact remains that in the eyes of whites the rapidly deteriorating condition of the northern cities could be blamed mainly on the large influx of blacks. The flight from the intense poverty of black southern life had merely lead to the poverty of life in the ghetto.

To overcome this de facto segregation there would either have to be massive busing of white students into the ghetto or blacks into the suburbs. The resultant white outcry was as could be expected. Nevertheless, this accounts for the dismal nationwide figures of 3 out of 4 black students in majority black schools. The highest racial isolation figures were found in the nonsouthern industrial states, New York, Pennsylvania, Michigan, California, Ohio, New Jersey, Illinois, and Indiana.

As an example, in New York City 80% of the black students attended majority black schools. The public schools in Chicago had 97% of its black students attending majority black schools.[68] Although it would be inaccurate to say the South had no large cities, as Atlanta, Birmingham, or New Orleans would belie, the major thrust of the anti-de facto segregation campaign would have to take place in the North.

Given the position of the Nixon Administration on further desegregation, i.e. "benign neglect," its opposition to any sort of busing, which would use the schools for a "purely social end," and the resulting effect on its executive

branch embodied in the Office for Civil Rights it remained the Supreme Courts task to carry desegregation spearheads forward. However, here the the politics of the Court itself must be taken into account. Just as there had been a change in administrations so had there been a corresponding change in Chief Justices, from Warren to Burger. This left a Court which was far less inclined to take the groundbreaking steps that the civil rights oriented Warren Court had made. Thus, from the years 1970-75 we are left with a somewhat complex maze of a few steps forward and a few steps backward.

A brief look at these decisions follows. On January 14, 1970, the Court in Carter v West Feliciana Parish School Board[69] held that the U.S. Court of Appeals' deferral of state public school desegregation beyond February 1, 1970 was improper. In this per curiam opinion, the Court held that the deferral of desegregation represented a misconstrual of the Alexander v Holmes (396 US 19, 24 LEd 2d 19, 90 SCt 29) as to the obligation of every school district to terminate dual school systems at once and to operate only unitary schools from that point on.

In two other cases, Dowell v Board of Education of the Oklahoma City Public Schools[70] and Northcross v Board of Education of the Memphis, Tennessee City Schools[71] further steps forward were made on the Court's part. In Dowell the Court held erroneous the order of the U.S. Court of Appeals vacating the District Courts approval of changes in the Oklahoma City school attendance boundaries to further desegregation.[72] In the Northcross decision the Court overruled the Court of Appeals and substituted its own finding that the Board "is now operating a dual school system."

The 1970-71 term of the Supreme Court involved a number of desegregation cases, one of which, the Swann decsion, of extreme importance to the desegregation effort. In Davis v Board of School Commissioners of Mobile County,[73] the Court

upheld a federal court order requiring an Alabama school board to desegregate its faculty and staff. At the same time the case was remanded for further consideration as to changes in school attendance zones.[74]

A Georgia County School Board, in efforts to desegregate a dual school system, was held not to be precluded by the equal protection clause or by the Civil Rights Act of 1964 from considering the students race in assigning them to new attendance zones. However, this case, McDaniel v Barresi,[75] must also be taken as a step forward in that specifically it held that the County School Board as part of its affirmative duty to desegregate and establish a unitary school system could properly take into consideration the race of its elementary school children in assigning them to previously all-white schools.

In North Carolina State Board of Education v Swann[76] a North Carolina statute prohibiting the assignment or busing of students on the basis of race or for the purpose of creating racial balance was held unconstitutional as this law would hinder the ability of local school authorities to effectively fulfill their constitutional obligation to end racially segregated, dual school systems. The same Swann was a party to another decision that also stands as a landmark in the desegregation effort, Swann v Charlotte-Mecklenburg Board of Education.[77]

In the 1971 Swann decision the Court affirmed a Federal Court order requiring the North Carolina County Board to adopt plans for desegregating a dual school system where these plans included provisions for desegregation of faculty, new attendance zones, and the busing of students.[78] The District Court's order, an excellent example of the steps necessary to achieve desegregation, ordered reassignment of faculty members in such a way as to result in the ratio of black to white faculty members being the same as their ratio throughout the entire

school system. In creating new attendance zones the District Court ordered that some inner-city blacks be transported to outlying predominately white schools so that the percentage of blacks would range from about 17% to less than 36% in each high school and from about 9% to 33% in each junior high school.[79]

The importance of Swann lies in the fact that it is the first time the Supreme Court has gone on record as actively supporting busing as a means to achieve desegregation. Furthermore it recognizes a broad grant of power in the District Court to fashion a remedy which would assure a unitary schoolsystem. It is only through the combination of changes in attendance zoning and a certain amount of busing that any true measure of success can be achieved in combating de facto desegregation.

During the 1971-72 term two decisions were handed down in the school desegregation field. The first of these, U.S. v Scotland Neck City Board of Education, held that implementation of a state statute authorizing the creation of a separate school district for a city was properly enjoined where the effect would be to impede disestablishment of a racially segregated county school system.[80] The second of these decisions, Wright v Council of the City of Emporia,[81] enjoined establishment of a separate city school district where its effect was to impede the process of dismantling the racially segregated school system Emporia had at that time.

In the 1972-73 term the Court decided three more school desegregation cases that would be small steps forward for the desegregation effort. In Keyes v School District No.1,[82] the Court placed the burden on the school district of proving that other segregated schools in the system were not the result of de jure segregation. In Norwood v Harrison[83] the Court held that a state's action in loaning textbooks to students in racially discriminatory private schools was unconstitutional. In

the third case of the term, Northcross v Board of Education of Memphis City Schools,[84] the Court held that under the Emergency School Aid Act of 1972 a successful private plaintiff in a school desegregation litigation in a federal court should ordinarily be awarded a reasonable attorneys fee as part of the costs.

The 1973-74 term saw the beginning of the swing the other way in the Burger Court in school desegregation cases. Another landmark decision, Milliken v Bradley,[85] held that a Federal District Court order concerning the desegregation of Detroit schools by a plan covering a three county metropolitan area, including 53 other school districts-many of them majority white, was improper. The Court went further and held that since the record established de jure segregation in the city schools only and did not establish any significant constitutional violation by the 53 suburban school districts, or any significant inter-district violations producing inter-district segregative effect, the order could apply to the Detroit city schools alone and not to the suburban school districts.[86]

This case represented a serious set back for the school desegregation campaign in northern cities. It is extremely difficult, if not impossible, to completely irradicate desegregation in the inner-city schools, whether it be de jure or de facto, without a court order like the one overturned in Milliken. Manipulation of boundaries and attendance zones is virtually impossible given the geopraphical logistics and isolation of many of the northern cities. This once again raises the question of busing.

In other decisions of the term, a Federal District Court's injunction against the exclusive use by segregated private schools of city recreational facilities was held to be proper in Gilmore v Montgomery.[87] More importantly, the Court in Defunis v Odegaard[88] passed on deciding the issue of reverse discrimination. Here, the Court held that a law school students action challenging the constitutionality of a state law school admission policy giving preferential treatment from less

qualified minority applicants was moot as the plaintiff had gained admission. This ducking of the reverse discrimination issue left it a hot issue in the school desegregation movement to this day.

The 1973-74 term, thus, represented the turning point in the Court's determination to achieve racial equality in public education. No longer was the Court making bold leaps forward in educational desegregation. It is significant that the landmark decision of the term, Milliken v Bradley, would have to be seen as a large step backwards for desegregation in that it denied one method for achieving desegregation in Northern inner-city schools and left unanswered the question as to how to effectively achieve desegregation.

THE FUTURE OF EDUCATIONAL DESEGREGATION: THE FIRE SLOWLY BURNS ON

In the twenty years since Brown v Board of Education and the ten years since the Civil Rights Act of 1964 great strides have been taken to overcome segregation in our school systems. A few figures bear repeating in this summation. One of these is extremely illustrative of the measure of success that has been achieved, that is that 6 million of the nation's 6.8 million black students are in school with white students.

In 1964, ten years after Brown only 2% of the black students in the southern states were in school with whites. Today, there are more than 90% of black students in these states in school with white students. However, as late as 1968, 68% of the black students were totally isolated in these states. Now this figure has been cut to 8.7 percent.[89]

These last figures illustrate the fact that the last five to ten years have been the years in which the major steps towards enforcing Brown have taken place.

When the question is asked "why did it take 20 years?" to achieve this limited success in implementing Brown it must be answered by stating Brown was a great ripping apart of an entire structure of society and the substituting of a more racially balanced one in its place.

Brown went far beyond the Louisianna Transportation Law it overturned and stood as the spark and major source of fuel for a civil rights movement that greatly altered the shape of American life. There is a qualification on the success of the civil rights movement in the education field. The 1972 survey shows that nationally 45.2% of the black students are still in schools that are 80% or more minority. However, in the Deep South, the number diminishes greatly drops so that only 29.9% of the black students are in 80 to 100% minority schools.[90]

This illustrates the shift in emphasis from the southern dual school systems, where large inroads have been made in overturning discrimination, to the North, where little success has been achieved. In Baltimore, Detroit, and St. Louis nearly 7 out of 10 public school students are black. In Washington, D.C., this figure rises to 9 out of 10. In Chicago and Cleveland nearly 6 out of 10 public school students are black.

In the years ahead, if complete desegregation of the educational facilities of the nation is to become a reality, a solution must be found to the de facto segregation problem in northern cities. Given the decision in Milliken v Bradley it will not be easy, if at all possible, to find this solution. However, it would be foolish to call the efforts made since Brown less than a success. The efforts made, whether voluntarily, under court order, or under governmental direction, were a success but they were a partial one and not a complete success.

Educational equality is not a reality today. However, it is much more of a reality than it was in 1954 and much more of a reality than it was in 1964 or even as late as 1968. Progress has been made, a great deal of progress as a matter of fact. Nevertheless, the ultimate success or failure of the efforts to achieve racial equality in education depends on this progress continuing. Even if the flame burns slowly it must keep burning.

FOOTNOTES

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